

PUBLIC UTILITIES COMMISSION

505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3298

**Agenda ID# 2461**

July 3, 2003

TO: PARTIES INTERESTED IN RESOLUTION ALJ-183

This draft resolution will be on the agenda at the August 21, 2003, Commission meeting. The Commission may then vote on this draft resolution, or it may postpone a vote.

When the Commission acts on the draft resolution, it may adopt all or part of it as written, amend or modify it, or set it aside and prepare its own order. Only when the Commission acts does the resolution become binding on the parties.

Parties to the proceeding may file comments on the draft resolution. Opening comments shall be filed and served no later than July 23, 2003, and reply comments filed and served no later than July 29, 2003. Service is required on all parties shown on the attached service list.

Finally, comments must be served on Assistant Chief Administrative Law Judge Steven Kotz in the ALJ Division and on Harriett Burt, the Commission's Public Advisor, and for that purpose I suggest hand delivery, overnight mail, or other expeditious method of service.

/s/ ANGELA K. MINKIN by LYNN T. CAREW

Angela K. Minkin

Chief Administrative Law Judge

ANG:jva

Attachment

PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Resolution ALJ-183
Administrative Law Judge Division
August 21, 2003

R E S O L U T I O N

RESOLUTION ALJ-183. To terminate the Advocates Trust Fund and distribute all remaining assets to the Department of Consumer Affairs, as agency of the State of California in accordance with the terms of the Declaration of Trust approved in Decision (D.) 82-05-009, and modified in D.82-08-059 and D.92-03-090.

Summary

The Advocates Trust Fund (ATF) has been depleted and no longer contains sufficient funds to pay intervenor compensation awards in future proceedings. We terminate the ATF pursuant to the provisions of the Declaration of Trust that established the ATF, and direct the trustee to distribute all remaining trust assets to the State Department of Consumer Affairs

Background

The Commission established the ATF in 1982. It is the predecessor to the statutory intervenor compensation program first enacted in 1984 and amended several times since.¹ The ATF did not create a comprehensive program for compensation of intervenors. It was created to defray expenses related to litigation of consumer interests in quasi-judicial complaint cases before the Commission.

¹ The statutory intervenor compensation program is set forth in Pub. Util. Code §§ 1801-1812.

Specifically, the ATF was established in connection with the settlement of a complaint by Consumers Lobby Against Monopolies (CLAM) against Pacific Telephone and Telegraph Company (Pacific) for failure to collect termination charges provided in its tariff. The settlement required Pacific to establish the ATF and fund it with \$200,000. The Declaration of Trust (Trust) establishing the fund provides for its independent administration by California Bank and Trust (Trustee).² Pursuant to the terms of the Trust, the members of the Commission serve as the Disbursements Committee.³

The bulk of the monies held in the ATF now has been awarded to eligible litigants, and the fund is almost entirely depleted. (The ATF now has a balance of about \$709).⁴ However, the Trust made no provision for funding beyond Pacific's initial payment. Since the current balance is insufficient to continue the ATF as a source of intervenor compensation, termination of the ATF should be considered.

The Trust, Section 8.2, contains the procedure to be followed in the event that the Commission determines it is appropriate to terminate the ATF. The ATF may be terminated at any time by order of the Commission. The Trust requires that notice and an opportunity to be heard be provided to all parties to Case 10066 (the complaint that resulted in creation of the ATF) prior to termination.

The Trust further provides that upon termination, all remaining assets of the ATF shall be distributed by the Trustee in accordance with the order of the Commission. Distribution of remaining assets shall be to a nonprofit fund, foundation, or corporation which is organized and operated exclusively for charitable purposes and which has established its exemption from taxation under Section 501(c)(3) of the Internal Revenue

² California Bank and Trust is the successor trustee to Pacific Union Bank and Trust Company.

³ The rules governing administration of the ATF are set forth in the Declaration of Trust dated October 11, 1982. This document was approved by the Commission in D.82-05-009. It was subsequently modified in D.82-08-059 and D.92-03-090.

⁴ On July 2, 2003, the balance of the fund was \$709.30. No awards have been charged against the fund since that time, and the Trustee has suspended administration fees, pending termination of the fund.

Code. Alternatively, the Commission may choose to distribute the remaining assets to a public entity or agency of the State of California. (Trust, Section 1.5.)

Discussion

In the approximately 20 years that the ATF has been in existence, it has not been heavily used. The vast majority of intervenor compensation requests have been made pursuant to the statutory program, which is not surprising considering the relatively narrow scope of the ATF. For this reason, it has taken two decades to deplete the \$200,000 fund; however, the ATF now has been depleted to the point that it has insufficient funds to pay intervenor compensation awards in future proceedings.

We conclude that it is appropriate at this time to terminate the ATF, pursuant to the provisions of the Trust. In accordance with the requirements of the Trust, notice and an opportunity to be heard have been provided to all parties interested in Case (C.) 10066 and included on the service list of Rulemaking (R.) 91-09-001 (the most recent proceeding which considered modifications of the ATF), prior to termination of the Trust. The draft resolution has also been made available for public review and comment.

We have considered the options for distribution of the remaining assets in the ATF, totaling approximately \$709, and consistent with Section 1.5 of the Trust, we will direct the trustee to distribute all of the remaining assets to the Department of Consumer Affairs, an agency of the State of California whose mission is to promote and protect the interests of California consumers.

In taking this step, we also go on record as favoring the continuation of ATF on a legislative basis, although we make no specific legislative proposal in this resolution.

Comments on Draft Resolution

Pursuant to the terms of the Trust establishing the ATF, the Commission served the draft of this Resolution on all parties interested in C.10066 who actively participated in the most recent proceeding, R.91-09-001, which considered modifications of the ATF.

The draft resolution was also made available for public review and comment.

IT IS RESOLVED that:

Because there is insufficient money remaining in the ATF to maintain the fund as a means of compensation for intervenors, it is appropriate at this time to terminate the ATF.

The Trustee, California Bank and Trust, is directed to close the ATF account. The Trustee is instructed to distribute the assets remaining in the trust account to the Department of Consumer Affairs, an agency of the State of California.

This resolution becomes effective today.

I certify that this resolution was adopted by the Public Utilities Commission at its regular meeting on _____, 2003, the following Commissioners approving it:

WILLIAM AHERN
Executive Director

**ATTACHMENT A
LIST OF APPEARANCES**

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(END OF ATTACHMENT A)